IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE N.V. RAMANA

WRIT PETITION NO.24623 of 2004

Between:

A.B. Kesari Kumar, S/o. A.B. Bhaktavatsalam,
R/o. Samajam Street, tiruchanur, Tirupathi Rural Mandal, Chittoor District.

..... PETITIONER

AND

The Indian Overseas Bank, 630, V.V. Mahal Road,
Tirupathi, Chittoor District, Rep. by its Authorised Officer.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ, Order or direction, more particularly one in the nature of Writ of Mandamus, declaring the auction sale notice dated 9-12-2004 issued by the Respondent as arbitrary, unjust, discriminatory and illegal and consequently set aside the same and direct the Respondent to consider and grant reasonable time preferably six months period to the Petitioner to enable him to pay the loan amount of Sri R. Venugopal (Borrower) and with all other consequential benefits, monetary and otherwise.

Counsel for the Petitioner: MR.V.JAGAPATHI

Counsel for the Respondent: ---

The Court, at the admission stage, made the following:

–

–

–

–

THE HON'BLE SRI JUSTICE N.V. RAMANA

–

W.P. No. 24623 of 2004

–

O r d e r:

Assailing the Auction Sale Notice dated 09-12-2004, issued by the respondent, proposing to auction the house property of the petitioner, the present writ petition is filed.

It appears that in the year 2002, the respondent sanctioned loan amount of Rs.3,00,000/- to M/s. Balaji Metals, represented by one Sri. R. Venugopal, to whom the petitioner stood as surety by mortgaging his house property, though he contends that he signed the papers without knowing that the papers would be used for surety purpose. It appears that the said Sri. R. Venugopal did not repay the loan amount owing to his sustaining losses in his business. In those circumstances, the respondent issued Demand Notice dated 18-3-2004 to the loanee under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') demanding him to pay an amount of Rs.3,66,004/-, due and payable by him as on 29-02-2004, within sixty days.

The petitioner states that on coming to know of the Demand Notice, he submitted representation dated 28-6-2004 to the respondent requesting to grant him at least six months time to repay the amount on behalf of the loanee, but the respondent declined to grant the same, and called upon the petitioner to pay 25% of the amount demanded immediately, and the balance on or before
31-7-2004. The petitioner states that on 30-7-2004, he again made similar representation to the respondent, and to prove his bona fides, he also repaid an amount of Rs.70,000/-, and he is still required to repay an amount of Rs.2,46,013/-,

and while so, he states that as per the computer statement of account furnished by the respondent on 12-12-2004, the outstanding amount payable by the loanee is shown as Rs.4,19,799-56, which is incorrect.

As the total amount was not repaid by the loanee, it appears that the respondent issued possession notice of the property mortgaged by the petitioner as security to the loan, and subsequently, issued the impugned Auction Sale Notice for realization of the outstanding dues of the borrower.

Heard the learned counsel for the petitioner. The learned counsel for the petitioner submits that the petitioner is not the borrower, the borrower having defaulted, the petitioner is ready and willing to pay the loan amount, and after giving credit to the amount of Rs.70,000/- paid by him, he is liable to pay only an amount of Rs.2,46,013/-, and it is not known how the respondent could have shown the loan outstanding at Rs.4,19,799-56, which is incorrect. Inasmuch as the petitioner has agreed to repay the amount of Rs.2,46,013/-, the impugned Auction Sale Notice issued by the respondent for sale of the property mortgaged by him, which is worth more than Rs.25,00,000/-, should be stayed and the respondent be directed to grant the petitioner to pay the amount of Rs.2,46,013/- in instalments spread over a period of six months.

What are the amounts due and liable to be paid by the borrower or the petitioner, who is the surety, what are the amounts paid by them towards discharge of loan amount, what is the interest that is to be levied and how the interest has to be calculated, are all disputed questions of fact, which cannot be gone into in a proceeding under Article 226 of the Constitution of India, for they are matters which require full-dressed trial. Be that as it may, according to the own admission of the petitioner, the borrower having availed the loan, failed to repay the same owing to business losses. Inasmuch as the petitioner submitted his house property title documents to secure the loan taken by the borrower, and as the borrower had defaulted in repaying the loan amount, the respondent issued notice to the borrower calling upon him to repay the loan amount under the Act, and as neither the borrower nor the petitioner, who is the surety, repaid the amount, the respondent issued possession notice followed by Auction Sale Notice, and no exception can be taken thereto. Though the petitioner contends that he is ready and willing to repay the total loan amount in instalments, the fact remains he is disputing the amounts demanded by the respondent, and if there is no dispute as to the amounts repayable

by the borrower or loanee, whether to grant instalments to repay the loan amount, is purely within the domain of the respondent, who has advanced the loan, and it is not for this Court to direct the respondent to grant instalments.

There is no merit in the writ petition, and the same is accordingly dismissed. No costs.

_____

N.V. RAMANA, J.

Date: 31st December, 2004.

KSR

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Indian Overseas Bank, 630, V.V. Mahal Road,
   Tirupathi, Chittoor District, Rep. by its Authorised Officer.

2. Two CD copies.